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**MAY 22 2023**

CLERK U.S. BANKRUPTCY COURT  
Central District of California  
BY hawkins DEPUTY CLERK

8 UNITED STATES BANKRUPTCY COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10 RIVERSIDE DIVISION

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12 In re: Case No.: 6:22-bk-11185-WJ  
13 ROSALIE JEAN MORENO, CHAPTER 13  
14 Debtor.

15 **SCHEDULING ORDER**  
16  
17 Hearing Date:  
Date: May 31, 2023  
Time: 2:00 p.m.  
Ctrm.: 304  
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1           On May 2, 2023, the chapter 13 trustee filed a motion to dismiss this case due to a failure of  
2 the debtor to make plan payments under the terms of the confirmed plan [docket #60] (“Motion”).  
3 On May 16, 2023, the debtor filed opposition to the motion [docket #62]. Having reviewed the  
4 case, the Motion and the opposition to the Motion, the Court hereby finds that no oral argument  
5 regarding the Motion is necessary and, pursuant to Rule 9013-1(j)(3) of the Local Bankruptcy  
6 Rules, the Court hereby takes off calendar the hearing and waives appearances. No hearing shall  
7 occur.

8           The evidentiary record for the Motion is now closed and no further briefs or pleadings with  
9 respect to the Motion are necessary or permitted (other than, if appropriate, a withdrawal of the  
10 Motion). For the reasons set forth in the Motion, the Court finds that granting the request to  
11 dismiss this case is appropriate due to the payment default by the debtor under the terms of the  
12 confirmed plan. Failing to make plan payments timely is a classic basis for dismissal of a  
13 chapter 13 case. See, e.g., In re McDonald, 118 F.3d 568 (7th Cir. 1997). In McDonald, the  
14 bankruptcy court dismissed a chapter 13 case in which the debtor was ten days late making the first  
15 plan payment. The Seventh Circuit Court of Appeals affirmed and the untimeliness in this case is  
16 considerably greater than the ten days in McDonald.

17           Other cases are consistent with the McDonald decision. For example, the Bankruptcy  
18 Appellate Panel for the Ninth Circuit ruled similarly and cited McDonald with approval in  
19 Zapata v. United States Trustee (In re Zapata), 2012 Bankr. LEXIS 4647, \*14-16 (9th Cir. BAP  
20 2012) (affirming a bankruptcy court which dismissed a chapter 13 case because the debtors failed  
21 to make plan payments and denying a motion to vacate that dismissal order, stating that the  
22 “[f]ailure to make the payments required by § 1326(a) is a sufficient ground for dismissal of the  
23 chapter 13 case . . . [and] even a ten-day delay . . . was grounds for dismissal of a chapter 13  
24 petition . . . [Therefore], [b]ecause Debtors have not established that the bankruptcy court erred  
25 in its dismissal order, the court did not abuse its discretion in denying reconsideration of that  
26 dismissal order.”). See also In re Sando, 30 B.R. 474 (E.D. Pa. 1983)<sup>1</sup>; Rodriguez v. Banco

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28           <sup>1</sup> In Sando, the chapter 13 debtors fell behind in making two plan payments to the chapter 13 trustee. Given  
the two-month arrearage, the chapter 13 trustee filed a motion to dismiss the case. The debtors opposed and offered

1 Popular de Puerto Rico (In re Rodriguez), 516 B.R. 177 (1st Cir. BAP 2014)<sup>2</sup>; Bernegger v. King,  
2 2011 U.S. Dist. LEXIS 67716 (E.D. Wis. 2011)<sup>3</sup>; In re Dorff, 480 B.R. 919 (Bankr. E.D. Wis.  
3 2012)<sup>4</sup>; Monte Carlo Cruise Concessions, Inc. v. Lassman, 2005 U.S. Dist. LEXIS 2155 (D.Mass.  
4 2005)<sup>5</sup>; see also LBR 3015-1(k)(4) (“Dismissal or Conversion for Non-Payment. If the debtor  
5 fails to make a plan payment, the case may be dismissed or converted to a case under chapter 7.”).

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9 to “pay the trustee the amount owed to that date.” Id. at 476. The debtors offered a full cure of the missing two  
10 months of payments. The bankruptcy court rejected this suggestion and dismissed the case due to the failure of the  
11 debtors to make the payments timely. The bankruptcy court “did not find this offer to be a sufficient basis for  
12 denying the trustee’s motion.” Id.

13 On appeal, the district court affirmed. The district court stated that the “bankruptcy court acted within its  
14 discretion in not permitting Sando to attempt to comply with the statute and the debtor’s plan at such a late juncture.”  
15 Id. The district court noted that the obligation of the debtors under the chapter 13 plan “to make regular payments . . .  
16 is clear and unequivocal.” Id. Consequently, the failure to make those payments timely was sufficient grounds for  
17 dismissal of the case even in the face of the debtors offering to make the missing payments late.

18 <sup>2</sup> In Rodriguez, the chapter 13 debtors filed a bankruptcy case but failed to pay the filing fee timely and, in  
19 response, the bankruptcy court dismissed the case. The debtors then paid the filing fee and filed a motion to vacate the  
20 dismissal order. The bankruptcy court denied the motion to vacate the dismissal order even though the filing fee had  
21 been paid. The debtors then appealed that denial order and several other orders. The appellate court affirmed one of  
22 the orders and dismissed the appeal as to all the other orders due to the failure of the debtors to timely appeal them.  
23 Thus, the case was dismissed due to untimely payment of the filing fee (even though the fee was eventually paid).

24 <sup>3</sup> In Bernegger, a chapter 13 debtor failed to make plan payments, which resulted in dismissal of the case.  
25 The debtor filed a motion to reinstate the case, but the bankruptcy court denied the motion and the district court  
26 affirmed. The district court treated the debtor’s motion as a motion to vacate the dismissal order pursuant to  
27 Rule 60(b) and denied it.

28 In that case, the debtor also failed to pay the appellate filing fee. As a result, the district court issued an  
order to show cause setting a deadline for payment of the filing fee (May 20, 2011). The debtor missed this deadline  
and did not pay until three weeks later (on June 10, 2011). The district court held that dismissal of the appeal was  
appropriate for this reason alone. The district court stated: “In this case, Bernegger was given ample opportunity to  
comply with the court’s order regarding payment of the filing fee, yet the payment of the filing fee was still  
accomplished in an untimely fashion. As such, dismissal of his appeal, based on this fact alone would be warranted.”  
Id. at \*2.

29 <sup>4</sup> In Dorff, the court set a deadline for the debtor to pay the filing fee. When the debtor did not comply, the  
30 court dismissed the case. The debtor then filed a motion to vacate the dismissal order and, at the same time, the  
31 debtor paid the filing fee. The debtor paid the fee, however, twenty-one days after the deadline. As a result, the court  
32 denied the motion to vacate the dismissal order (even though the full filing fee had been paid). The court found that  
33 the debtor had not established a basis for relief under Rule 60(b). Id. at 923 (“These circumstances do not provide  
34 ‘clear and convincing evidence’ that the Debtor committed a ‘mistake’ entitling her to the ‘extraordinary remedy’  
35 contemplated in Rule 60(b). Further, the Debtor’s neglect is not ‘excusable.’”).

36 <sup>5</sup> In Monte Carlo, a bankruptcy court entered an order which a party appealed. When filing the notice of  
37 appeal, however, the appellant did not pay the filing fee. The bankruptcy court entered an order requiring payment,  
38 but the appellant paid the fee twenty-five days late. The appellee filed a motion to dismiss which the bankruptcy  
39 court granted. The appellant filed a motion to reconsider which the bankruptcy court denied. On appeal, the district  
40 court affirmed the dismissal of the appeal even though it constituted a “harsh and drastic sanction.” Id. at \*10.

Accordingly, as a result of the undisputed defaults by the debtor in making plan payments, the Court is prepared to enter an order granting the Motion and dismissing the case. However, the Court shall wait to do so for another ten days in order to provide the debtor with additional time to resolve the matter. If the Motion is not withdrawn by June 1st, it will be granted thereafter and the trustee should submit a proposed order granting the Motion if the court does not enter its own dismissal order.

IT IS SO ORDERED.

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Date: May 22, 2023

Wayne Johnson  
Wayne Johnson  
United States Bankruptcy Judge